TRAVANCORE
GOVERNMENT GAZETTE
SUPPLEMENT.

Tuesday,
9th April, 1907.

Abstract Proceedings of the Travancore Legislative Council.

The Council met in the Dewan's room, Public Offices, at 4 P. M. on Friday the 5th April 1907. / 23rd Meenom 1082.

PRESENT.

Dewan Bahadur S. Gopalachariyar Esquire, B. A. & B. L.,
Dewan ...*Presiding.*

V. Nagam Aiya Esq., B. A., F. R. H. S.
A. Govinda Pillai Esq., B. A. & B. L.
V. I. Kesava Pillai Esq., M. A.
A. J. Vieyra Esq., B. A.
A. M. Muthunayagom Pillai Esq., B. A. & B. L.
E. Rama Iyer Esq.
K. G. Sesha Aiyar Esq., B. A. & B. L.

N. Ramachandra Iyer Esq., B. A. & B. L. ... *Secretary.*

STEAM-BOILERS AND PRIME-MOVERS BILL.

Mr. Vieyra.—At the request of Mr. Mahadeva Iyer who is absent to-day, I beg to move on his behalf that the Steam-Boilers and Prime-Movers Bill as amended at the last meeting of the Council be passed, and that it come into force from the 1st Chingom 1083.

Seconded by Mr. Govinda Pillai.

The motion was put and agreed to.

CRIMINAL PROCEDURE CODE AMENDMENT BILL.

Mr. Govinda Pillai.—I beg to propose that the Report of the Select Committee on the Criminal Procedure Code Amendment Bill be taken up for consideration. No formal notice of amendments has been received from the members. Considering, however, the importance of the Bill, I would move that the Bill may be read in Council, section by section, and the provisions considered.

Seconded by Mr. Rama Iyer.

Carried.

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SECTION II.

Mr. Rama Iyer.—I beg to propose that the words "or second" be inserted between the words "first" and "class" in line 5 of this section. Besides the ordinary powers, Schedule IV contemplates additional powers being conferred on Second class Magistrates also, in certain classes of offences. The amendment is only verbal, and is necessary to bring the wording of the section into conformity with the schedule.

Seconded by Mr. Sesha Iyer.

Carried.

Mr. Muthunayagom Pillai.—I beg to propose that the words "as powers with which he may be invested by Our Government" be added at the end of this section. These words occur in the British Indian Act and would make the meaning clear.

Seconded by Mr. Sesha Iyer.

Carried.

SECTION III.

Section 236—B.

Mr. Govinda Pillai.—I beg to propose that the word "the" be inserted between the words "in" and "manner" in line 8, and the words "for ordinary trials" added after the word "code" in line 9, of this section. The object of the amendment is to make the language precise.

Seconded by Mr. Sesha Iyer.

Carried.

Sections 236—C, 236—D, and 236—E.

Mr. Rama Iyer.—Sir, on reading through these sections, there seems to be some difficulty as to the recording of evidence in cases tried summarily under this chapter. The provisions laid down in sections 236—D & 236—E contemplate a distinction to be maintained in the matter of recording evidence in appealable cases and in non-appealable cases. To be more clear, the above provisions require the recording of the substance of the evidence of witnesses in cases where appeals lie, whereas it may be dispensed with in other cases. Unlike the provisions of the British Indian Act, sections 413 & 414, the only cases tried by a Magistrate under our code in which no appeals lie are those in which a District Magistrate passes a sentence of fine not exceeding Rs. 50 only. Such a Magistrate, in dealing with an offence summarily triable has to decide, even before commencing the examination of witnesses, whether the case in hand is to be treated as an appealable one or not. The determination of this question will necessarily have to depend upon the nature and extent of the sentence that may have eventually to be awarded in the case. What I beg to submit is, whether it will be possible or expedient for a Magistrate to anticipate the punishment that the offender may deserve, and to take down the substance of the oral testimony, or dispense with it, as the case may be.

President.—As stated by Mr. Rama Iyer, there is a real difficulty, and a District Magistrate is constrained to predicate the nature and extent of the sentence to be awarded by him in each case and then follow the procedure laid down in section 236—D or 236—E. This point requires consideration. The distinction referred to in sections 236—D & 236—E is no doubt in conformity with the corresponding provisions of the British Indian Act, sections 263 & 264. We have not, however, introduced in our Bill, any provision corresponding to section 414 of that Act, whereby the right of appeal against convictions recorded in summary trials, is curtailed. Such being the case, it is a matter for consideration, whether the procedure prescribed for recording evidence in appealable cases may not, with advantage, be followed in the other cases as well. This will, at the same time, obviate the difficulty pointed out by Mr. Rama Iyer.

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After some discussion Mr. Ramier proposed that section 236—E be omitted, and sections 236—C, and 236—D, be modified and re-arranged as follows.—

"236—C. In trials under this chapter, the procedure prescribed for summons cases shall be followed except as hereinafter mentioned.

The Magistrate need not record the evidence of the witnesses in full, but shall record the substance thereof, and shall also enter in such form as Our Government may direct, the following particulars:—

(*a*) the serial number;
(*b*) the date of the commission of the offence;
(*c*) the date of the report or complaint;
(*d*) the name of the complainant (if any);
(*e*) the full name and residence of the accused;
(*f*) the offence complained of and the offence (if any) proved;
(*g*) the plea of the accused and his examination (if any);
(*h*) the finding, and in case of conviction, a brief statement of the reasons therefor;
(*i*) the sentence or other final order; and
(*j*) the date on which the proceedings terminated.

"236—D. No sentence of imprisonment for a term exceeding one month shall be passed in the case of any conviction under this chapter."

Seconded by Mr. Govinda Pillai.

Carried.

Section 236—F.

Mr. Muthunayagom Pillai.—I beg to propose that the section be numbered as 236—E, that the word "record" be substituted for "records" in line 1, and "236 C" for '236—D' in line 2, and that the words "and judgments recorded under section 236—E" be omitted. These modifications are rendered necessary in consequence of the amendment just carried.

Seconded by Mr. Vieyra

Carried.

SECTIONS IV TO XIII AND XVII.

Mr. Govinda Pillai:—Sir, I beg to invite the attention of this Council to the observations contained in para 9 of the Select Committee's report, and for the reasons stated therein, I would propose that sections IV to XIII and section XVII of the bill bearing on the provisions relating to trials with the aid of assessors be wholly expunged from the bill.

Seconded by Mr. Kesava Pillai.

Mr. Sesha Iyer.—I doubt, Sir, whether under the rules regulating the conduct of business in Council, it is open to the Council at this stage of the bill to re-open the question regarding the introduction of the system of trial with the aid of assessors, the principle of it having been discussed at length and duly affirmed by this Council in one of its former meetings. Under section 46 of the Council rules, when a bill has passed through the Select Committee stage, any motion considered should not extend to the principle of the bill. To ignore this express provision would be to shake the finality of the proceedings of the Council. Though the provision regarding the system of trial by jury was lost for want of a majority, I beg to submit that the system of trial with the aid of assessors was accepted by the Council, and it would be unfortunate, if even this mild concession were done away with.

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Mr. Rama Iyer.—I beg to differ from my friend Mr. Sesha Iyer as regards the interpretation of the rule. A perusal of section 39 of the rules would show that it is competent to the Select Committee to recommend the abandonment, even of the entire bill. It follows therefore that the Council has the power of taking into consideration the suggestion of the Committee for the omission of any particular portions from the bill. As regards the necessity for the provision, it seems to me that it is not advisable to introduce the system of trial with the aid of assessors in the present state of advancement of the country.

Mr. Muthunayagom Pillai.—I do not think the question admits of being reopened by the Council, as the principle of it has already been affirmed after considerable discussion.

President.—Trial by jury is the privilege of an Englishman. The system was sought to be introduced in British India. Government were prepared to allow it only in certain cases, and to permit trial with assessors as a concession, or as a substitute. It is the system of trial by jury that is at the root, and without it, the system of trial with the aid of assessors is not of much value by itself, and is even anomalous. No doubt, in some cases in England, trial with assessors is provided, but that is only in nautical cases &c. where expert opinion is deemed desirable. I put it therefore for you to consider whether it is advisable to have a piece-meal legislation of this kind.

In regard to the competency of the Council to consider at this meeting the desirability or otherwise of retaining the provisions, I do not think it is inconsistent with the rules of the Council, especially in view of section 39. As however the question is important, I would reserve putting the matter to vote till 12 noon to-morrow.

The Council adjourned at 6-15 P. M.

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